

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

NO PROTEST RECEIVED
Please copy to District
Date [redacted]
[redacted]

Contact Person: [redacted]

ID # [redacted]

Telephone Number: [redacted]

In Reference to:

OP:E:EO:T:2

Date: FEB 22 1999

DO: [redacted]
EIN [redacted]

Dear Applicant:

This is in regard to your application for recognition of exemption under section 501(c)(5) of the Internal Revenue Code.

You were established to administer the pension fund established by the [redacted], an [redacted] company. Your primary activity is the payment of regular pension benefits. However provision has also been made for early retirement within 5 years of normal retirement, retirement in the event of disability and a death benefit.

The information you have submitted indicates that in [redacted] there are two separate labor relations channels. One deals with pay bargaining and is subject to collective bargaining. The second covers a number of non-pay related issues including pensions. You describe the pensions channel as being a consultation process which involves the company and representatives of the participating labor unions.

Your activities are controlled by your board of trustees. which prior to [redacted] was evenly divided with [redacted] employer and [redacted] employee representatives. You have represented that in [redacted] the company was involved in a possible take-over. After consultations between the labor unions and pension boards, [redacted] appointed an independent company called the [redacted] (referred to as [redacted]) to act as the corporate trustee of the fund. [redacted] appointed two independent trustees to your board. These trustees were entitled to one vote in order to provide a swing vote. The employer and the employees each continued to appoint [redacted] representatives to the board.

Prior to [redacted] you had two pension funds. One plan was for weekly paid staff, (blue collar employees) and the other was for monthly staff (white collar employees). These two plans merged in [redacted]. However, even though the plans have merged, blue collar and white collar employees are separately represented in pay bargaining and in the pensions consultation process.

Re: [REDACTED]
[REDACTED]

There are [REDACTED] labor unions participating in your program. You represent that the weekly paid staff is [REDACTED] percent unionized and the monthly staff is approximately [REDACTED] percent unionized. Because of the lower level of union membership in the staff plan, there is no requirement that the employee representatives be trade union representatives. The fund is at least partially employer funded. The employees are required to contribute a percentage of their pensionable salary at graduated rates. The employer contributes whatever is required to guarantee the solvency of the Fund in light of the actuarially calculated benefits that are the liabilities of the fund. You have represented that employer contributions have made up the bulk of the monies contributed to the fund.

The diagram of the system involved in pension matters which was submitted by you indicates that you utilize a three level process for both weekly and monthly staff. Level one is the works committees, level two is the business or divisional committees and level three is the company wide central committee.

Level one, involves one plant or several plants at one location. It meets monthly and is concerned with matters as diverse as safety and pensions. The employee representatives at this level appoint the employee representatives at the next two levels.

Level two is the businesses committees. These committees meet two times per year. These committees have various sub-committees, which provide a forum for discussions of relevant issues between shop stewards and management representatives. The union members at this level pass resolutions which are in effect instructions to their level 3 delegates.

Level three is the [REDACTED] which meets once a year. The [REDACTED] has a standing subcommittee for pension policy matters called the [REDACTED]. There are [REDACTED] management representatives on this committee and [REDACTED] union shop stewards elected by the level 2 shop stewards. You represent that this committee operates as a traditional labor organization, and meets once a year with the General Manager Personnel who is the manager of the [REDACTED]. You have represented that the [REDACTED] meet throughout the year and discusses pension matters. The committee's function is to represent blue-collar workers in the pensions consultation process and to act as a pressure group to promote pension benefits improvements.

Re: [REDACTED]
[REDACTED]

You indicate that originally there were separate committees for both white and blue collar. These committees, which you describe as recognized labor organizations, have an agreed procedure to work with the pensions system and the company. The employee representatives are nominated by democratic elections at company's annual central committee meetings.

You indicate in your [REDACTED] memorandum that representatives of both monthly and weekly employees are instrumental in recommending changes to the pension system it is the [REDACTED] who prepares the proposals and that these recommendations are influenced by the state of the company's business and the recommendation. The board of directors of [REDACTED] decide which improvements, if any, are to be put before you. Your board then acknowledges and officially adopts the changes recommended to them.

Section 501(c)(5) of the Code provides for the exemption of labor, agricultural, and horticultural organizations.

Section 1.501(c)(5)-1(a) of the Income Tax Regulations provides the organizations contemplated by section 501(c)(5) as entitled to exemption from income taxation are those which:

- (1) have no net earnings inuring to the benefit of any member, and
- (2) have as their objects the betterment of the conditions of those engaged in such pursuits; the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Effective December 21, 1995, section 1.501(c)(5)-1(b)(1) of the regulations provides that, in general, an organization is not an organization described in section 501(c)(5) if its principal activity is to receive, hold, invest, disburse or otherwise manage funds associated with savings or investment plans or programs, including pension or other retirement savings plans or programs.

Section 1.501(c)(5)-1(b)(2) indicates that certain dues-funded labor organizations are excepted by the provisions of 1.501(c)(5)-1(b)(1). These excepted organizations are those established and maintained by another labor organization, funded by membership dues and not by employer contribution, and not directly or indirectly established or maintained by employers or governmental units.

Re: [REDACTED]
[REDACTED]

The accompanying Treasury Decision, T.D. 8726, 1997-34 I.R.B. 7, emphasizes that the new regulations clarify certain requirements of section 501(c)(5) of the Code and are not a change in the Service's position.

In Portland Co-operative Labor Temple Association, 39 B.T.A. 450 (1939) acq., 1939-1 (Part 1) C. B. 28; the petitioner owned an office building. The member labor unions and councils owned all the petitioner's capital stock, and its building was wholly devoted to their purposes and uses. The court indicated that the term labor organization for the purposes of section 501(c)(5) embraces the common acceptance of the term, including labor unions and councils and the groups which are ordinarily organized to protect and promote the interests of labor. The term labor organization calls for a liberal construction and is not a technical word nor a term of art.

Rev. Rul. 62-17, 1962-1 C.B. 87, holds that the payment of employee funded sick, accident, death or similar benefits by a labor organization, otherwise described in section 501(c)(5) of the Code does not preclude exemption under that subsection and is an appropriate activity for an exempt labor organization to engage in.

Rev. Rul. 67-7, 1967-1 C.B. 137, holds that an organization established and controlled by a labor union to provide strike and lockout benefits, on a mutual basis, to its members is exempt under section 501(c)(5) of the Code. The ruling concludes that strike benefits are directed to furthering a labor union's primary purpose of representing its members in matters of wages, hours of labor, working conditions, and economic benefits.

Rev. Rul. 76-420, 1976-2 C.B. 153, holds that an organization controlled by private individuals and not by a section 501(c)(5) labor organization, which contracted with members of the organization to pay a weekly income to those members in the event of a lawful strike called by the member's labor union, did not qualify for exemption under IRC 501(c)(5). The organization did not represent its members in matters relating to their employment, such as wages, hours of labor, working conditions, or economic benefits, and was not controlled by, or connected with, any of the labor organizations to which its members belonged.

Rev. Rul. 77-46, 1977-1 C.B. 147, in denying recognition of exemption to a collective bargained savings plan, sets forth the general test for establishing exemption under section 501(c)(5) of the Code. The test requires that in order for an organization to qualify as an exempt labor organization, it is necessary that its activities be those commonly or historically recognized as

Re: [REDACTED]
[REDACTED]

characteristic of labor organizations, or be closely related and necessary to accomplishing the principal purposes of exempt labor organizations. This organization did not qualify for recognition of exemption under section 501(c)(5) because it did not negotiate wages, hours, and working conditions or provide mutual benefits.

Morganbesser v. United States, 984 F. 2d 560 (2nd Cir. 1993); nonacq 1995-2 C.B. 2, held that a multiemployer pension trust operating pursuant to a collective bargaining agreement qualifies for recognition of exemption under section 501(c)(5) of the Code. Judge Miner, in dissenting from the majority opinion, recognized that under the Service's revenue rulings, connection to a traditional labor entity is necessary to support the granting of labor organization exemption. He continued to state that, "there can be no such connection where, as here, a pension plan is funded totally by employers, is not controlled by a labor union but by an independent board of trustees . . . and does not support or supplement the union in any way." Morganbesser, 984 F.2d at 565 (Miner, dissenting).

In Stichting Pensioenfonds Voor de Gezondheid, Geestelijke en Maatschappelijke Belangen v. United States of America (PGGM), 129 F.3d 195 (D.D.C. 1997) cert denied, 119 S. Ct. 43 (October 5, 1998) (hereinafter referred to as PGGM), the Court held that the fund was not exempt from federal income taxes as a labor organization described in section 501(c)(5) of the Code. This decision specifically found the analysis in Morganbesser v. United States, supra, unpersuasive and emphasized that an organization that "fulfills no representational role on behalf of labor nor is controlled by such as organization does not fall within the common understanding of the term." See also Tupper v. United States, 134 F.3d 444 (1st Cir. 1998).

Section 501(c)(5) of the Code, the regulations, revenue rulings, and court decisions, state that organizations are labor organizations if they are labor unions in the traditional sense or if their principal activity is engaging in employee representation. Other organizations can qualify as labor organizations if they engage in activities appropriate to labor organizations and are controlled by one or more labor organizations. See Portland Co-operative Labor Temple Association, and PGGM, supra. In order for an activity to be considered appropriate to a labor organization, that activity must be commonly or historically recognized as characteristic of labor organizations, or closely related to and necessary to accomplishing the principal purposes of exempt labor organizations. See Rev. Rul. 77-46, supra, (savings plan not considered commonly or historically recognized as a mutual labor organization activity). Where the activities are otherwise appropriate to a labor organization, but there is no significant

Re: [REDACTED]
[REDACTED]

connection to a labor organization, exemption is not available. See Rev. Rul. 76-420, supra.

The Internal Revenue Service position is that administering employer-provided pension benefits is not an appropriate activity for an exempt labor organization. Section 401 and other pension provisions of the Code contain stringent and detailed requirements for qualification for favorable tax treatment, including tax exemption for a pension trust. Allowing section 501(c)(5) exemption in these situations would effectively undermine the Congressional intent in enacting ERISA provisions of the Code. See PGGM, supra.

Your submissions indicate that your sole purpose is to hold, administer and invest funds for the payment of pension and other benefits to the employees of [REDACTED] and their beneficiaries. The provision of pension benefits appears to be your primary purpose. You have indicated that you receive your funding from both the company and its employees. It also appears that in [REDACTED] or [REDACTED] an independent company called [REDACTED] administered the plan and appointed your trustees. [REDACTED] also had the power to cast the deciding vote in any matter. Therefore, at least at that point in time, you did not have any meaningful connection with a qualifying section 501(c)(5) labor organization and could not qualify for exemption under section 501(c)(5) of the Code. Other information you have submitted indicates that originally the employer made the final determination regarding the provision of retirement benefits and that your role in the pension benefit area was purely that of a consultant. In addition, it is clear that you do not offer benefits on a mutual basis and you are not funded by dues paid by your members. It is also questionable whether you are controlled by your members. As indicated above, although you have stated that you are involved in negotiations concerning pension and other benefits, your role appears limited.

Where the principal activities are not those appropriate to a labor organization, the organization is not described in section 501(c)(5). Here the provision of partially employer funded pension benefits is not an appropriate labor organization activity. Therefore, you cannot qualify for recognition of exemption under section 501(c)(5) of the Code. Furthermore, it is unclear whether you are controlled by a labor organization and that fact would also preclude exemption under section 501(c)(5) of the Code. See and compare Rev. Rul. 67-7, supra and 76-420, supra.

Re: [REDACTED]

Your situation is distinguishable from that described in Rev. Rul. 62-17, supra, in which the Service granted exempt labor organization status to a union that provided mutual, employee-funded health and welfare benefits with funds contributed by its members. Significantly, as noted above, you are not a union, nor are you controlled by a union. Further, you principally provide pension benefits as opposed to health and welfare benefits, and you do not provide mutual benefits, which are historically associated with unions and labor organizations. Finally, the funds contributed towards the payment of benefits are not provided exclusively by employees who have arranged with you or other related organizations to provide for the payment of retirement benefits.

Although you have stated that you provide a forum for collective bargaining, you do not represent employees in bargaining for benefits. Rather, you merely consult with the employer representatives concerning the pension program and perform the administrative function of paying pension benefits. Accordingly, your organization is similar to the savings plan described in Rev. Rul. 77-46, supra. Neither your organization nor the savings plan described in Rev. Rul. 77-46 accomplish the principal purposes of an exempt labor organization.

Therefore, we have concluded that you do not qualify for recognition of exemption under section 501(c)(5) of the Code. Unless, otherwise exempted you are subject to the withholding requirements set forth in section 1442 of the Code. See also section 894 with regard to the applicability of any treaty obligations effecting rates or taxability of United States source income.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status or the filing of tax returns should be addressed to that office.

Re: [REDACTED]
[REDACTED]

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope: OP:E:EO:T:2 JJ, Room 6539. These symbols do not refer to your case but rather to its location.

Sincerely yours,

(Signed) Garland A. Carter

Garland A. Carter
Chief Exempt Organizations
Technical Branch 2CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]CC: [REDACTED]
[REDACTED]
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OP:E:EO:T:2 OP:GEO:T:2

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